

FIRST REGULAR SESSION  
HOUSE COMMITTEE SUBSTITUTE FOR  
**SENATE BILL NO. 71**  
**100TH GENERAL ASSEMBLY**

0515H.02C

DANA RADEMAN MILLER, Chief Clerk

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**AN ACT**

To repeal sections 287.310, 287.610, and 287.615, RSMo, and to enact in lieu thereof three new sections relating to workers' compensation law.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 287.310, 287.610, and 287.615, RSMo, are repealed and three new sections enacted in lieu thereof, to be known as sections 287.310, 287.610, and 287.615, to read as follows:

287.310. 1. Every policy of insurance against liability under this chapter shall be in accordance with the provisions of this chapter and shall be in a form approved by the director of the department of insurance, financial institutions and professional registration. Such policy shall contain an agreement that the insurer accepts all of the provisions of this chapter, that the same may be enforced by any person entitled to any rights under this chapter as well as by the employer, that the insurer shall be a party to all agreements or proceedings under this chapter, and his appearance may be entered therein and jurisdiction over his person may be obtained as in this chapter provided, and such covenants shall be enforceable notwithstanding any default of the employer.

2. Any insurer issuing a workers' compensation policy may offer, as a part of the policy or as an optional endorsement to the policy, a deductible plan or plans to allow the insured employer to self-insure for the deductible amount, subject to the approval of the director of the department of insurance, financial institutions and professional registration. No deductible plan shall be approved which permits, directly or indirectly, any part of the deductible to be charged to or passed on to an employee of the insured employer.

3. Any deductible plan authorized under this section may provide for the agreement between the insurer and the insured employer regarding the conditions under which the employer

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 shall be responsible for the payment of any deductible amount to the person or health care  
19 provider entitled to such payment pursuant to this chapter, except that no deductible plan shall  
20 be approved unless the insurer shall retain the ultimate responsibility for the payment of  
21 compensable claims. Where the agreement provides for the payment of the deductible amount  
22 by the insurer, the insurer shall pay all the deductible amount applicable to a compensable claim  
23 directly to the person or health care provider entitled to the benefit pursuant to this chapter, and  
24 shall then be reimbursed by the insured employer for such payments. The insured employer shall  
25 be liable to the insurer up to the limit of the deductible, and any failure on the part of the insured  
26 employer to provide such reimbursements shall be treated under the workers' compensation  
27 policy in the same manner as a nonpayment of premium. An employer's failure to reimburse  
28 deductible amounts to the insurer shall not cause the unpaid amount to be paid from the second  
29 injury fund under section 287.220. The insurer shall have the right to offset unpaid deductible  
30 amounts against unearned premiums, if any, in the event of a cancellation of the policy.

31 4. Deductible plans shall provide appropriate premium reductions, as approved by the  
32 director of the department of insurance, financial institutions and professional registration, to  
33 reflect the type and level of the deductible amount selected. Losses paid by the employer under  
34 the deductible shall be credited against the employer's experience modification while the  
35 deductible option is used, unless the employer exercises the right to purchase a gross reportable  
36 deductible plan.

37 5. An insurer shall not be required to offer a deductible if, as a result of a credit  
38 investigation, the insurer determines that the employer does not have the financial ability to be  
39 responsible for the payment of deductible amounts.

40 6. An insurer shall service and, if necessary, defend all claims that arise during the policy  
41 period, including those claims payable in whole or in part from the deductible amount.

42 7. No employer who self-insures for a deductible amount as provided in this section shall  
43 harass, discharge, or otherwise discriminate against any employee because the employee has  
44 taken any action or is considering taking action which might result in the insured employer being  
45 required to pay a deductible amount.

46 8. Any rating organization or advisory organization authorized by the provisions of  
47 section 287.330 may file on behalf of its members deductible plans for approval by the director  
48 of the department of insurance, financial institutions and professional registration.

49 9. In calculating the administrative surcharge owed pursuant to the provisions of this  
50 chapter for workers' compensation policies with deductible options, the administrative surcharge  
51 owed will be based upon the total premiums, which would have been paid for the deductible  
52 credit portion of the policy. The second injury fund surcharge owed by the employer who  
53 purchases a deductible policy will be assessed upon the total premiums which would have been

54 paid in the absence of the deductible option. The premium taxes owed pursuant to this chapter  
55 for workers' compensation policies with deductible options shall be assessed upon those total  
56 premiums paid upon the insurance policy excluding the deductible credit portion of the policy.  
57 The portion of the workers' compensation policy with a deductible option that is subject to an  
58 administrative surcharge shall not be subject to premium taxes, nor with respect to foreign  
59 insurance companies, the retaliatory tax imposed pursuant to section 375.916.

60 10. The director of the department of insurance, financial institutions and professional  
61 registration shall, by rule, specify any data reporting requirements applicable to workers'  
62 compensation policies with deductible options.

63 **11. No policy of insurance against liability under this chapter shall be approved by**  
64 **the director of the department of insurance, financial institutions and professional**  
65 **registration if, when determining the premium to be paid by an employer, a workers'**  
66 **compensation insurer includes as part of an employer's payroll any of the following:**

67 (1) Monetary bonuses, paid by an employer to an employee, of up to three percent  
68 of the employee's yearly compensation from such employer; or

69 (2) Contributions made by an employer to an employee's individual retirement  
70 account, if such account is authorized under state or federal law.

287.610. 1. After August 28, 2005, the division may appoint additional administrative  
2 law judges for a maximum of forty authorized administrative law judges. **Notwithstanding the**  
3 **provisions of section 36.025 to the contrary, after August 28, 2019, all administrative law**  
4 **judges appointed by the division and all administrative law judges serving as of August 28,**  
5 **2019, shall be subject to a defined term as provided in this section. The terms of those**  
6 **servicing as of August 28, 2019, shall be staggered based on their total months of service as**  
7 **an administrative law judge. The terms of the thirteen administrative law judges with the**  
8 **most months of service shall be two years. The terms of the thirteen administrative law**  
9 **judges with the next most months of service shall be four years. The terms of the**  
10 **administrative law judges appointed and not previously referenced in this subsection shall**  
11 **be six years. Thereafter, all terms of service shall be for six years. No administrative law**  
12 **judge shall serve beyond his or her term unless reappointed by the division. Any person**  
13 **appointed to fill a vacancy remaining in any term may complete such term.**

14 2. Appropriations shall be based upon necessity, measured by the requirements and needs  
15 of each division office. Administrative law judges shall be duly licensed lawyers under the laws  
16 of this state. Administrative law judges shall not practice law or ~~do~~ **engage in the business**  
17 **of law [business]** and shall devote their whole time to the duties of their office. The director of  
18 the division of workers' compensation shall publish and maintain on the division's website the  
19 appointment dates or initial dates of service for all administrative law judges.

20           ~~[2-]~~ **3.** The thirteen administrative law judges with the most ~~[years]~~ **months** of service  
21 shall be subject to a retention vote ~~[on August 28, 2008]~~ **in September 2019**. The next thirteen  
22 administrative law judges with the most ~~[years]~~ **months** of service in descending order shall be  
23 subject to a retention vote ~~[on August 28, 2012]~~ **in September 2022**. Administrative law judges  
24 appointed and not previously referenced in this subsection shall be subject to a retention vote ~~[on~~  
25 ~~August 28, 2016]~~ **in September 2025**. Subsequent retention votes **for each administrative law**  
26 **judge** shall be held **in like manner** every ~~[twelve]~~ **three years thereafter**. **Under subsection**  
27 **8 of this section**, any administrative law judge who has received two or more ~~[votes]~~ **successive**  
28 **recommendations** of no confidence under performance audits by the committee, **performance**  
29 **audits by the director of the division of workers' compensation, or by operation of law, or**  
30 **by a combination of any such methods**, shall not receive a vote of retention.

31           ~~[3-]~~ **4.** The administrative law judge review committee members shall not have any direct  
32 or indirect employment or financial connection with a workers' compensation insurance  
33 company, claims adjustment company, health care provider nor be a practicing workers'  
34 compensation attorney. All members of the committee shall have a working knowledge of  
35 workers' compensation.

36           ~~[4. The committee shall within thirty days of completing each performance audit make~~  
37 ~~a recommendation of confidence or no confidence for each administrative law judge.]~~

38           **5.** The administrative law judges appointed by the division shall only have jurisdiction  
39 to hear and determine claims upon original hearing and shall have no jurisdiction upon any  
40 review hearing, either in the way of an appeal from an original hearing or by way of reopening  
41 any prior award, except to correct a clerical error in an award or settlement if the correction is  
42 made by the administrative law judge within twenty days of the original award or settlement.  
43 The labor and industrial relations commission may remand any decision of an administrative law  
44 judge for a more complete finding of facts. The commission may also correct a clerical error in  
45 awards or settlements within thirty days of its final award. With respect to original hearings, the  
46 administrative law judges shall have such jurisdiction and powers as are vested in the division  
47 of workers' compensation under other sections of this chapter, and wherever in this chapter the  
48 word "commission", "commissioners" or "division" is used in respect to any original hearing,  
49 those terms shall mean the administrative law judges appointed under this section. When a  
50 hearing is necessary upon any claim, the division shall assign an administrative law judge to such  
51 hearing. Any administrative law judge shall have power to approve contracts of settlement, as  
52 provided ~~[by]~~ **under** section 287.390, between the parties to any compensation claim or dispute  
53 under this chapter pending before the division of workers' compensation. Any award by an  
54 administrative law judge upon an original hearing shall have the same force and effect, shall be  
55 enforceable in the same manner as provided elsewhere in this chapter for awards by the labor and

56 industrial relations commission, and shall be subject to review as provided ~~[by]~~ **under** section  
57 287.480.

58 6. Any of the administrative law judges employed ~~[pursuant to]~~ **under** this section may  
59 be assigned on a temporary basis to the branch offices as necessary in order to ensure the proper  
60 administration of this chapter.

61 7. All administrative law judges shall be required to participate in, on a continuing basis,  
62 specific training that shall pertain to those elements of knowledge and procedure necessary for  
63 the efficient and competent performance of the administrative law judges' required duties and  
64 responsibilities. Such training requirements shall be established by the division subject to  
65 appropriations and shall include training in medical determinations and records, mediation and  
66 legal issues pertaining to workers' compensation adjudication. Such training may be credited  
67 toward any continuing legal education requirements.

68 8. (1) The administrative law judge review committee shall conduct a performance audit  
69 of all administrative law judges every two years. ~~[The audit results, stating the committee's~~  
70 ~~recommendation of confidence or no confidence of each administrative law judge shall be sent~~  
71 ~~to the governor no later than the first week of each legislative session immediately following~~  
72 ~~such audit.] **The committee shall, within thirty days of completing each performance audit,**~~  
73 **make a recommendation of confidence or no confidence for each administrative law judge.**  
74 **If the committee fails to present such recommendation within the time limit prescribed,**  
75 **such recommendation shall be made within thirty days thereafter by the director of the**  
76 **division of workers' compensation based on his or her own review. Failure of both parties**  
77 **to make a recommendation shall be deemed to be a recommendation of no confidence for**  
78 **purposes of this section.** Any administrative law judge who has received ~~[three]~~ **two** or more  
79 ~~[votes of no confidence under two successive performance audits by the committee]~~ **successive**  
80 **recommendations of no confidence under performance audits by the committee,**  
81 **performance audits by the director of the division of workers' compensation, or by**  
82 **operation of law, or by a combination of any such methods,** may have ~~[their]~~ **his or her**  
83 appointment immediately withdrawn.

84 (2) The review committee shall consist of one member appointed by the president pro  
85 tem of the senate, one member appointed by the minority leader of the senate, one member  
86 appointed by the speaker of the house of representatives, and one member appointed by the  
87 minority leader of the house of representatives. The governor shall appoint to the committee one  
88 member selected from the commission on retirement, removal, and discipline of judges. This  
89 member shall act as a member ex officio and shall not have a vote in the committee. The  
90 committee shall annually elect a chairperson from its members for a term of one year. The term  
91 of service for all members shall be two years **and members shall be eligible for**

92 **reappointment. Upon the expiration of such term, the position shall be vacant until a new**  
93 **appointment is made.** The review committee members shall all serve without compensation.  
94 Necessary expenses for review committee members and all necessary support services to the  
95 review committee shall be provided by the division.

96 9. No rule or portion of a rule promulgated pursuant to the authority of this section shall  
97 become effective unless it has been promulgated pursuant to the provisions of chapter 536.

287.615. 1. The division may appoint or employ such persons as may be necessary to  
2 the proper administration of this chapter. All salaries ~~[to clerical employees]~~ **of employees,**  
3 **including administrative law judges,** shall be fixed by the division and ~~[approved by the labor~~  
4 ~~and industrial relations commission. Beginning January 1, 2006, the annual salary of each~~  
5 ~~administrative law judge, administrative law judge in charge, and chief legal counsel shall be as~~  
6 ~~follows:~~

7 ~~—— (1) For any chief legal counsel located at the division office in Jefferson City, Missouri,~~  
8 ~~compensation at two thousand dollars above eighty percent of the rate at which an associate~~  
9 ~~circuit judge is compensated;~~

10 ~~—— (2) For each administrative law judge, compensation at ninety percent of the rate at~~  
11 ~~which an associate division circuit judge is compensated;~~

12 ~~—— (3) For each administrative law judge in charge, compensation at the same rate as an~~  
13 ~~administrative law judge plus five thousand dollars] **shall be subject to appropriation.**~~

14 2. The salary of the director of the division of workers' compensation shall be set by the  
15 director of the department of labor and industrial relations, but shall not be less than the salary  
16 plus two thousand dollars of an administrative law judge in charge. The appointees in each  
17 classification shall be selected as nearly as practicable in equal numbers from each of the two  
18 political parties casting the highest and the next highest number of votes for governor in the last  
19 preceding state election.

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